

1 A bill to be entitled

2 An act relating to environmental permitting; amending s.
3 373.414, F.S.; limiting local government authority to
4 prohibit mitigation of certain wetlands activities;
5 prohibiting certain local government resource permitting
6 in the Northwest Florida Water Management District;
7 reenacting and amending s. 373.4145, F.S.; requiring the
8 district and the Department of Environmental Protection to
9 jointly develop rules for the regulation of certain
10 activities related to stormwater management systems and
11 the management and storage of surface waters; requiring
12 the district and the department to streamline federal and
13 state wetland permitting programs and to implement such
14 measures; requiring certain exemptions and provisions for
15 rules relating to certain dwellings; requiring the
16 department and the district to enter into an operating
17 agreement for the implementation of certain provisions;
18 requiring the district to be responsible for the
19 regulation and local delegation of certain activities;
20 repealing certain provisions upon the adoption of rules;
21 repealing s. 4 of chapter 2005-273, Laws of Florida, and
22 s. 32 of chapter 2005-71, Laws of Florida, which specified
23 dates certain for the repeal of certain provisions
24 relating to permitting in the district; providing an
25 appropriation; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Paragraph (b) of subsection (1) of section
30 373.414, Florida Statutes, is amended to read:

31 373.414 Additional criteria for activities in surface
32 waters and wetlands.--

33 (1) As part of an applicant's demonstration that an
34 activity regulated under this part will not be harmful to the
35 water resources or will not be inconsistent with the overall
36 objectives of the district, the governing board or the department
37 shall require the applicant to provide reasonable assurance that
38 state water quality standards applicable to waters as defined in
39 s. 403.031(13) will not be violated and reasonable assurance that
40 such activity in, on, or over surface waters or wetlands, as
41 delineated in s. 373.421(1), is not contrary to the public
42 interest. However, if such an activity significantly degrades or
43 is within an Outstanding Florida Water, as provided by department
44 rule, the applicant must provide reasonable assurance that the
45 proposed activity will be clearly in the public interest.

46 (b) If the applicant is unable to otherwise meet the
47 criteria set forth in this subsection, the governing board or the
48 department, in deciding to grant or deny a permit, shall consider
49 measures proposed by or acceptable to the applicant to mitigate
50 adverse effects that may be caused by the regulated activity.
51 Local governments may not adopt or enforce ordinances,
52 resolutions, regulations, or policies that prohibit or restrict
53 mitigation that offsets wetland construction impacts pursuant to
54 this part. Any local government ordinance or regulation intended
55 to regulate construction in wetlands or surface waters shall
56 consider measures proposed by or acceptable to the applicant to
57 mitigate adverse effects that may be caused by the regulated

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58 | activity. Such measures may include, but are not limited to,
59 | onsite mitigation, offsite mitigation, offsite regional
60 | mitigation, and the purchase of mitigation credits from
61 | mitigation banks permitted under s. 373.4136. It shall be the
62 | responsibility of the applicant to choose the form of mitigation.
63 | The mitigation must offset the adverse effects caused by the
64 | regulated activity. Local governments within the geographical
65 | jurisdiction of the Northwest Florida Water Management District
66 | shall not adopt or enforce wetland regulatory programs or
67 | criteria more stringent than or duplicative of the environmental
68 | resource permitting program enacted pursuant to s. 373.4145(1).

69 | 1. The department or water management districts may accept
70 | the donation of money as mitigation only where the donation is
71 | specified for use in a duly noticed environmental creation,
72 | preservation, enhancement, or restoration project, endorsed by
73 | the department or the governing board of the water management
74 | district, which offsets the impacts of the activity permitted
75 | under this part. However, the provisions of this subsection shall
76 | not apply to projects undertaken pursuant to s. 373.4137 or
77 | chapter 378. Where a permit is required under this part to
78 | implement any project endorsed by the department or a water
79 | management district, all necessary permits must have been issued
80 | prior to the acceptance of any cash donation. After the effective
81 | date of this act, when money is donated to either the department
82 | or a water management district to offset impacts authorized by a
83 | permit under this part, the department or the water management
84 | district shall accept only a donation that represents the full
85 | cost to the department or water management district of
86 | undertaking the project that is intended to mitigate the adverse

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87 impacts. The full cost shall include all direct and indirect
88 costs, as applicable, such as those for land acquisition, land
89 restoration or enhancement, perpetual land management, and
90 general overhead consisting of costs such as staff time,
91 building, and vehicles. The department or the water management
92 district may use a multiplier or percentage to add to other
93 direct or indirect costs to estimate general overhead. Mitigation
94 credit for such a donation shall be given only to the extent that
95 the donation covers the full cost to the agency of undertaking
96 the project that is intended to mitigate the adverse impacts.
97 However, nothing herein shall be construed to prevent the
98 department or a water management district from accepting a
99 donation representing a portion of a larger project, provided
100 that the donation covers the full cost of that portion and
101 mitigation credit is given only for that portion. The department
102 or water management district may deviate from the full cost
103 requirements of this subparagraph to resolve a proceeding brought
104 pursuant to chapter 70 or a claim for inverse condemnation.
105 Nothing in this section shall be construed to require the owner
106 of a private mitigation bank, permitted under s. 373.4136, to
107 include the full cost of a mitigation credit in the price of the
108 credit to a purchaser of said credit.

109 2. The department and each water management district shall
110 report by March 1 of each year, as part of the consolidated
111 annual report required by s. 373.036(7), all cash donations
112 accepted under subparagraph 1. during the preceding water
113 management district fiscal year for wetland mitigation purposes.
114 The report shall exclude those contributions pursuant to s.
115 373.4137. The report shall include a description of the endorsed

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mitigation projects and, except for projects governed by s. 373.4135(6), shall address, as applicable, success criteria, project implementation status and timeframe, monitoring, long-term management, provisions for preservation, and full cost accounting.

3. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

4. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part.

Section 2. Section 373.4145, Florida Statutes, is reenacted and amended to read:

373.4145 ~~Interim~~ Part IV permitting program within the geographical jurisdiction of ~~for~~ the Northwest Florida Water Management District.--

(1) Within the geographical jurisdiction of the Northwest Florida Water Management District, taking into consideration the differing physical and natural characteristics of the area, the department and the district shall ~~the permitting authority of the~~

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~~department under this part shall consist solely of the following, notwithstanding the rule adoption deadline in s. 373.414(9):~~

(a) Jointly develop rules to regulate the construction, operation, alteration, maintenance, abandonment, and removal of stormwater management systems. The department shall adopt the rules no later than January 1, 2007; the district may implement rules prior to adoption pursuant to s. 120.54. Until the stormwater management system rules take effect, chapter 62-25 17-25, Florida Administrative Code, shall remain in full force and effect, and shall be implemented by the department.

Notwithstanding the provisions of this section, chapter 62-25 17-25, Florida Administrative Code, may be amended by the department as necessary to comply with any requirements of state or federal laws or regulations, or any condition imposed by a federal program, or as a requirement for receipt of federal grant funds.

The intent of these rules is to update the stormwater rules to improve water quality and water quality protection. This objective should be accomplished by generally applying the least restrictive measures and criteria adopted by the other water management district rules.

(b) Jointly develop rules for the management and storage of surface waters under this part. The department shall adopt the rules no later than July 1, 2008; the district may implement rules prior to adoption pursuant to s. 120.54. Until the rules for the management and storage of surface waters under this part take effect, rules adopted pursuant to the authority of ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994, shall remain in full force and effect, and shall be implemented by the department.

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173 However, the department is authorized to establish additional
174 exemptions and general permits for dredging and filling, if such
175 exemptions or general permits do not allow significant adverse
176 impacts to occur individually or cumulatively. However, for the
177 purpose of chapter 62-312 ~~17-312~~, Florida Administrative Code,
178 the landward extent of surface waters of the state identified in
179 rule 62-312.030(2) ~~17-312.030(2)~~, Florida Administrative Code,
180 shall be determined in accordance with the methodology in rules
181 62-340.100 through 62-340.600 ~~17-340.100 through 17-340.600~~,
182 Florida Administrative Code, ~~as ratified in s. 373.4211, upon the~~
183 ~~effective date of such ratified methodology.~~ In implementing s.
184 373.421(2), the department shall determine the extent of those
185 surface waters and wetlands within the regulatory authority of
186 the department as described in this paragraph. At the request of
187 the petitioner, the department shall also determine the extent of
188 surface waters and wetlands that ~~which~~ can be delineated by the
189 methodology ratified in s. 373.4211, but that ~~which~~ are not
190 subject to the regulatory authority of the department as
191 described in this paragraph. The intent of these rules is to
192 minimally encroach upon property interests while improving the
193 management and storage of surface waters. The scope of these
194 regulations must recognize the historically rural nature of the
195 district and the permitting thresholds and requirements must
196 reflect this distinction.

197 (c) Pursue streamlining of the federal and state wetland
198 permitting programs pursuant to ss. 373.4143 and 373.4144.

199 (d) Implement, to the maximum extent possible, streamlining
200 measures, including electronic permitting, field permitting, and
201 certification programs for activities with minimal individual or

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202 cumulative impact, informal wetland determinations, and other
203 similar measures.

204 (2)~~(e)~~ The department may implement chapter 40A-4, Florida
205 Administrative Code, in effect prior to July 1, 1994, pursuant to
206 an interagency agreement with the Northwest Florida Water
207 Management District adopted under s. 373.046(4).

208 (3) The rules adopted under subsection (1), as applicable,
209 shall:

210 (a) Incorporate the exemptions in ss. 373.406 and
211 403.813(2).

212 (b) Incorporate the provisions of rule 62-341.475(1)(f),
213 Florida Administrative Code, applicable to single-family homes
214 located entirely or partially within wholly owned, isolated
215 wetlands.

216 (c) Exempt from the notice and permitting requirements of
217 this part the construction or private use of a single-family
218 dwelling unit, duplex, triplex, or quadruplex that:

219 1. Is not part of a larger common plan of development or
220 sale proposed by the applicant.

221 2. Does not involve wetlands or other surface waters.

222 (d) At a minimum, the rules adopted shall include the
223 exemptions and general permits which have been enacted by rule in
224 accordance with s. 373.414(9), Florida Statutes, by the
225 Department and other water management districts and general
226 permits authorized by s. 403.814, Florida Statutes. In the event
227 an activity or structure is exempt from permitting in any
228 district and permitted in others, it shall be exempt in the
229 Northwest Florida Water Management District. These rules shall
230 exempt resurfacing or paving of unpaved roads and an alteration

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231 of wholly-owned artificially created surface waters which do not
232 connect to waters of the state.

233 ~~(2) The authority of the Northwest Florida Water Management~~
234 ~~District to implement this part or to implement any authority~~
235 ~~pursuant to delegation by the department shall not be affected by~~
236 ~~this section. The rule adoption deadline in s. 373.414(9) shall~~
237 ~~not apply to said district.~~

238 (4)(3) The department and the division of permitting
239 responsibilities in s. 373.046(4) shall not apply within the
240 geographical jurisdiction of the Northwest Florida Water
241 Management District shall enter into an operating agreement under
242 s. 373.046 to effectively implement this section and provide the
243 district with the amount of responsibility under the agreement
244 that resources allow, including, at a minimum, the responsibility
245 for regulating silviculture and agriculture. The operating
246 agreement shall encourage local delegation of the
247 responsibilities under this section pursuant to s. 373.441.

248 (5) The provisions of s. 373.414(11)-(14) shall not apply
249 to rules adopted under this section.

250 (6) The following activities shall continue to be governed
251 by the provisions of s. 373.4145, Florida Statutes 1994:

252 (a) The operation and routine custodial maintenance of
253 activities legally in existence before the effective date of the
254 rules adopted under subsection (1), as long as the terms and
255 conditions of the permit, exemption, or other authorization for
256 such activities continue to be met.

257 (b) The activities approved in a permit issued pursuant to
258 s. 373.4145, Florida Statutes 1994, and the review of activities
259 proposed in applications received before the effective date of

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the rules adopted under subsection (1), as applicable. This paragraph shall also apply to any modification of the plans, terms, and conditions of a permit issued pursuant to s. 373.4145, Florida Statutes 1994, that lessens the environmental impact, except any such modification shall not extend the time limit for construction beyond 2 additional years.

This subsection shall not apply to any activity that is altered, modified, expanded, abandoned, or removed after adoption of the applicable rules under subsection (1).

(7) Unless the petitioner elects to apply rule 62-340, Florida Administrative Code, to all wetlands, the delineation of the landward extent of wetlands and other surface waters for petitions filed under s. 373.421(2) prior to the effective date of the rules adopted under paragraph (1)(b) shall continue to be determined in accordance with rules 62-312.030(2), Florida Administrative Code, in effect July 1, 1994, and rules 62-340.100 through 62-340.600, Florida Administrative Code, as ratified in s. 373.4211.

~~(4) If the United States Environmental Protection Agency approves an assumption of the federal program to regulate the discharge of dredged or fill material by the department or the water management districts, or both, pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.; the United States Army Corps of Engineers issues one or more state programmatic general permits under the referenced statutes; or the United States Environmental Protection Agency or the United States Corps of Engineers approves any other delegation of regulatory authority under the~~

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289 ~~referenced statutes, then the department may implement any~~
290 ~~permitting authority granted in this part within the Northwest~~
291 ~~Florida Water Management District which is prescribed as a~~
292 ~~condition of granting such assumption, general permit, or~~
293 ~~delegation.~~

294 (8)~~(5)~~ Within the geographical jurisdiction of the
295 Northwest Florida Water Management District, the methodology for
296 determining the landward extent of surface waters of the state
297 under chapter 403 in effect prior to the effective date of the
298 methodology ratified in s. 373.4211 shall apply to:

299 (a) Activities permitted under the rules adopted pursuant
300 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
301 1983, as amended, or that ~~which~~ were exempted from regulation
302 under such rules, prior to July 1, 1994, and that ~~which~~ were
303 permitted under chapter 62-25 ~~17-25~~, Florida Administrative Code,
304 or exempt from chapter 62-25 ~~17-25~~, Florida Administrative Code,
305 prior to July 1, 1994, provided:

306 1. An activity authorized by such permits is conducted in
307 accordance with the plans, terms, and conditions of such permits.

308 2. An activity exempted from the permitting requirements of
309 the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement
310 to the Florida Statutes 1983, as amended, or chapter 62-25 ~~17-25~~,
311 Florida Administrative Code, is:

312 a. Commenced prior to July 1, 1994, and completed by July
313 1, 1999;

314 b. Conducted in accordance with a plan depicting the
315 activity that ~~which~~ has been submitted to and approved for
316 construction by the department, the appropriate local government,

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the United States Army Corps of Engineers, or the Northwest Florida Water Management District; and

c. Conducted in accordance with the terms of the exemption.

(b) An activity within the boundaries of a valid jurisdictional declaratory statement issued pursuant to s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or the rules adopted thereunder, in response to a petition received prior to June 1, 1994.

(c) Any modification of a permitted or exempt activity as described in paragraph (a) that ~~which~~ does not constitute a substantial modification or that ~~which~~ lessens the environmental impact of such permitted or exempt activity. For the purposes of this section, a substantial modification is one that ~~which~~ is reasonably expected to lead to substantially different environmental impacts.

(d) Applications for activities permitted under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the 1983 Florida Statutes, as amended, that ~~which~~ were pending on June 15, 1994, unless the application elects to have applied the delineation methodology ratified in s. 373.4211.

(9) Subsections (2) and (8) are repealed on the effective date of the rules adopted pursuant to subsection (1).

(10) In the event that the Legislature in any given fiscal year fails to fund and staff the environmental resource permitting program established under this section, the environmental resource permitting program shall be suspended for that fiscal year and the rules and statutes governing development activity in the district shall revert to those in effect on April

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345 1, 2006 until such time as funding and staffing levels are
346 restored consistent with this section.

347 ~~—(6)— Subsections (1), (2), (3), and (4) shall be repealed~~
348 ~~effective July 1, 2006.~~

349 Section 3. The sum of \$2,740,000 is appropriated from the
350 Water Management Lands Trust Fund to the Department of
351 Environmental Protection for the 2006-07 fiscal year for the
352 operational expenditures of the Northwest Florida Water
353 Management District pursuant to s. 373.4145, F.S., as amended by
354 this act.

355 Section 4. Section 4 of chapter 2005-273, Laws of Florida,
356 and section 32 of chapter 2005-71, Laws of Florida, are repealed.

357 Section 5. This act shall take effect July 1, 2006.